

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'SMC-1' NEW DELHI**

**BEFORE SHRI R. K. PANDA ACCOUNTANT MEMBER  
AND  
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

**I.T.A. No. 7558/DEL/2018 (A.Y 2015-16)  
(THROUGH VIDEO CONFERENCING)**

<b>Shailaja</b> <b>B-44, Vishrantika Apartments,</b> <b>Plot No. 5-A, Sector-3, Dwarka,</b> <b>New Delhi</b> <b>BCSPS5048B</b> <b>(APPELLANT)</b>	<b>Vs</b>	<b>ITO</b> <b>Ward-69(5)</b> <b>Block-D, Pratyakash Kar</b> <b>Bhawan, Civic Centre,</b> <b>JLN Marg,</b> <b>New Delhi</b> <b>(RESPONDENT)</b>
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<b>Appellant by</b>	<b>Sh. Sushil Chadha, CA</b>
<b>Respondent by</b>	<b>Mrs. Shivani Bansal, Sr. DR</b>

<b>Date of Hearing</b>	<b>10.03.2021</b>
<b>Date of Pronouncement</b>	<b>20.04.2021</b>

**ORDER**

**PER SUCHITRA KAMBLE, JM**

This appeal is filed by the assessee against order dated 31/08/2016 passed by CIT (A)-Meerut for assessment year 2012-13.

2. The grounds of appeal are as under:-

“1. The disallowance of loss of STCG of 1,12,76,573/- is bad in law and on the facts of the case.”

2. The basis of disallowance is bad in law and on the facts of the case.”

3. The assessee filed her original return of income as on 31/08/2015 declaring an income of Rs. 5,71,960/- along with paying of double taxes of Rs. 43,230/- including self-assessment tax of Rs. 33,230/- as on 31/8/2015. In the original return of income loss against sale of property of Rs.1,12,76,573/-

was not claimed by the assessee under the bonafide belief that taxes are paid against income only. The assessee is a Government School Teacher till 2017 and left the job due to her health. The assessee did not claim TDS of Rs.52,500/- deducted against the sale of property but paid additional self assessment tax of Rs. 33,230/-. The assessee has not claimed credit of Rs. 52,500/- as she was under the belief that TDS against loss is not claimable. The Assessing Officer assessed the total income of Rs.5,35,980/- and disallowed short term capital loss of Rs.1,12,76,573/- and did not allow the same to be carried forward for set off.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that that if original return is filed before due date and on discovery of any omission or wrong statement, return can be revised u/s 139(5). The Ld. AR relied upon the decision of the Hon'ble Delhi High Court in case of Escorts Mahle Ltd. vs. CIT 2009 119 ITD 119 (Delhi). The Ld. AR further submitted that the entire process created artificial loss which is set off against subsequent capital gain income of Rs. 34,73,196/- in Assessment Year 2017-18 is incorrect observation by the Assessing Officer. The Ld. AR submitted that the assessee incurred loss as on 8/7/2014 and earned capital gain as on 3/1/2017. In other words, the assessee was not aware of future earning at the time of loss. The Ld. AR further submitted that the assessee set off this loss against income by filing belated return during assessment proceedings of Assessment Year 2015-16 only as on 25/11/2017 after verbal confirmation of allowability of loss from the Assessing Officer. The Ld. AR further submitted that it proves the bonafide belief of assessee and even if the set off loss was ignored, the assessee was eligible to claim deduction u/s 54F of the Income Tax Act, 1961 resulting in 'NIL' taxability in the hand of the assessee.

6. The Ld. DR relied upon the assessment order and the order of the CIT(A).

7. We have heard both the parties and perused the material available on record. It is pertinent to note that the assessee has filed original return of income as on 31/08/2015 declaring an income of Rs. 5,71,960/- along with paying of double taxes of Rs. 43,230/- including self-assessment tax of Rs. 33,230/- on 31/8/2015. In the original return of income loss against sale of property of Rs.1,12,76,573/- was not claimed by the assessee under the bonafide belief that taxes are paid against income only. The assessee did not claim TDS of Rs.52,500/- deducted against the sale of property but paid additional self assessment tax of Rs. 33,230/-. The assessee has not given credit of Rs. 52,500/- as the assessee was under the belief that TDS against loss is not claimable. But the fact remains that there was a sale of property which should have been declared by the assessee either in the original return or in the revised return and should have paid taxes accordingly or at the most should have offered to tax to the Revenue. Thus, the assessee has not done the same in the present case. There was property purchase and though the assessee is entitled to claim benefit under Section 54F, but the same is determined when she satisfies all the conditions laid down in the said provisions, the same was not done by the assessee at the revised income stage also. Hence, the Assessing Officer has rightly made addition as well as the CIT(A) rightly confirmed the addition. Hence, appeal of the assessee is dismissed.

8. In result, appeal of the assessee is dismissed.

Order pronounced in the Open Court on this 20<sup>th</sup> Day of April, 2021

Sd/-  
(R. K. PANDA)  
ACCOUNTANT MEMBER  
Dated : 20/04/2021  
R. Naheed \*

Sd/-  
(SUCHITRA KAMBLE)  
JUDICIAL MEMBER

**Copy forwarded to:**

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**ASSISTANT REGISTRAR  
ITAT NEW DELHI**

<b>Date of dictation</b>	<b>10.03.2021</b>
<b>Date on which the typed draft is placed before the dictating Member</b>	<b>10.03.2021</b>
<b>Date on which the typed draft is placed before the Other Member</b>	<b>20.04.2021</b>
<b>Date on which the approved draft comes to the Sr. PS/PS</b>	<b>20.04.2021</b>
<b>Date on which the fair order is placed before the Dictating Member for pronouncement</b>	<b>20.04.2021</b>
<b>Date on which the fair order comes back to the Sr. PS/PS</b>	<b>20.04.2021</b>
<b>Date on which the final order is uploaded on the website of ITAT</b>	<b>20.04.2021</b>
<b>Date on which the file goes to the Bench Clerk</b>	<b>20.04.2021</b>
<b>Date on which the file goes to the Head Clerk</b>	
<b>The date on which the file goes to the Assistant Registrar for signature on the order</b>	
<b>Date of dispatch of the Order</b>	